IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2458 OF 2004

The Greater Bombay Co-operative Bank Ltd. ..Petitioner.

Vs.

M/s. Reliable Marketing & Ors. ..Respondents.

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Mr. V.R. Walawalkar i/b Mr. S.R. Bhalekar for the Petitioner.
Mr. Aniruddha Joshi i/b Smt. Vijaya Mistry for Respondent Nos.1, 3 and 6.
Mr. Sanjay Jain in/s Mr. Lalit Jain for Respondent Nos.2, 4 and 5.

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CORAM : DR.D.Y.CHANDRACHUD, J.

13th April, 2006.

P.C.:

1. Rule, returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent taken up for hearing and final disposal.

2. This Petition under Article 227 has been directed by the Greater Bombay Co-operative Bank Limited against an order of the revisional authority which dismissed a revision application filed by the bank against an order of the Assistant Registrar. The bank had

preferred a claim for the recovery of an amount of Rs.1,59,86,069/- as against which the Assistant Registrar allowed the claim to the extent of Rs.6,16,778/-. Aggrieved by the order of the Assistant Registrar refusing to allow the claim for the rest of the amount, the Bank went in revision. The revisional authority has by an order dated 16th October, 2003 confirmed the order of the Assistant Registrar. The entire reasoning of the revisional authority is contained in one paragraph and it would be convenient for the purpose of these proceedings to extract the reasons in the impugned order :

> "After hearing both the Learned Advocates and on perusal of the document presented in this case, there is sufficient reason to believe in the submissions of Learned Advocate Sandeep Dolas for Respondent Nos.2, 4 and 7. Perusal of the impugned order indicates that the Respondent No.1 Assistant Registrar has given the reasons while coming to the conclusion on issuing the Recovery Certificate for reducing the amount. It is a fact that the shares to the tune of Rs.56,29,888/- were lying with the Bank and this information is given by the Share Agent Shri Kamlesh Sawla of the Bank. This fact is not denied by the Applicant Bank. Respondent appears to have informed to adjust the said shares against the dues of the Applicant Bank. It is also observed by the Respondent No.1 Assistant Registrar that there is no objection to file the proceedings for the dues during the period from 1990 to 1997."

3. From the record before the Court, it would appear that an application for the sanction of a loan came to be submitted to the Bank on 16th August, 1997. On 23rd September, 1997, the Bank communicated that on 18th September, 1997 at a meeting of the loan committee, credit facilities to the extent of Rs.1.25 Crores were sanctioned at a rate of interest of 19.5% per annum. The facility was to be valid until 31st December, 1998. The loan was inter alia secured by a pledge of marketable shares which were then valued at Rs.8.14 lacs on date of the letter of sanction. A loan agreement was entered into between the Bank and the borrower. Upon a default having been committed an application for a recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 came to be preferred. The Assistant Registrar allowed the application only to the extent of Rs.6,16,778/-

4. The principal bone of contention relates to a deduction of Rs.1,46,77,681/- that was granted by the Assistant Registrar against the loan outstandings of the Bank. The basis on which this deduction was granted is that according to the borrower, the Bank's share agent

had informed the Bank on 15th August, 1997 that the value of the pledged shares was Rs.56,29,888/-. The Assistant Registrar took this value of Rs.56.29 lacs, added to it compound interest at the rate of 19% per annum and directed that the Bank should give credit to the borrower in the amount of Rs.1,46,77,681/- as noted above. The finding of the Assistant Registrar in that regard reads as follows :

> "On 5-8-97 the bank's share agent informed that the value of the Respondent's shares is Rs.56,29,888/-. Considering this fact the outstanding in the Respondent's account might have come down and the bank has charged 19% compound interest on Respondent's loan account so it is required to give credit at that rate."
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> "The bank has failed to take any steps when the value of the shares of the Respondents was good so now the bank should not return the said shares to Respondents and should adjust the said amount in the loan account."

This finding was assailed in revision by the Bank and the revisional authority, as already noted above, has confirmed the finding.

5. On behalf of the Petitioner, it has been submitted that firstly,

the Bank could not have been called upon to sell the shares on 6th August, 1997 since the loan itself came to be sanctioned on 23rd September, 1997. Secondly, under the terms of the sanction, the amount was repayable on 31st December, 1998 and therefore in any event the sale could not have taken place in pursuance of the alleged letter dated 5th August, 1997. Thirdly, it was submitted having regard to the provisions of Section 176 of the Contract Act, the Bank as pawnee was entitled to bring a suit on the pawnor upon the debt or promise and retain the goods as a collateral security or to sell the thing pledged, on giving the pawnor reasonable notice of sale. The Bank was not therefore bound to sell the shares. Reliance in this regard was placed on the judgment of the Madreas High Court in **S.L. Ramaswamy Chetty v. M. S. A. P. L. Palaniappa Chettiar** (AIR 1930 Madras 364) and the judgment of Chief Justice Y.K. Sabharwal (as the Learned Chief Justice then was) speaking for a Division Bench of this Court in **State Bank of India v. Smt. Neela Ashok Naik** (AIR 2000 Bombay 151). Fourthly, it was submitted that the Assistant Registrar had proceeded on the erroneous basis that the valuation of the shares as on 5th August, 1997 was Rs.60 lacs. The affidavit filed

by the share agent of the bank would in fact show that in the first week of April 1997, a valuation had roughly been placed on the shares and it was found that the shares would fetch about Rs.55 to 60 lacs.

6. On the other hand, it was urged before this Court on behalf of the Respondents that the revisional authority has confirmed a finding of fact of the Assistant Registrar and that therefore no further reasons were required to be given over and above those that have been indicated in the impugned order. It was submitted that in September 1997, there was a continuing sanction that was issued by the Bank in respect of the loan facility which was granted earlier and it was the Bank's agent who had fixed the value of the shares at Rs.56.29 lacs. Finally, it was submitted that it was not open to the revisional authority in the exercise of the revision to interfere with a finding of fact and, that the bank had accepted the recovery certificate. It was submitted that while proceeding in execution, it was not open to the Bank to challenge the recovery certificate issued under Section 101 of the Maharashtra Co-operative Societies Act,

1960.

7. A revision lies under Section 154 of the Maharashtra Co-operative Societies Act, 1960 before the State Government or the Registrar against an order that has been passed by a Sub-ordinate Officer against which no appeal lies. The revision is for the purpose of considering the legality or, as the case may be, the propriety of the decision or the order made and as to the regularity of the proceedings. In the present case, the claim of the bank was to the extent of Rs.1.59 Crores. The Assistant Registrar for the reasons which

have already been noted earlier, considered it fit and proper to deduct from the amount of the claim of the Bank an amount of Rs.1.46 Crores and he justified this action on the ground that shares of the value of Rs.56.29 lacs as on 5th August, 1997 had been pledged with the Bank. The Assistant Registrar allowed compound interest at the rate of 19% per annum on the aforesaid amount, in computing the amount of Rs.1.46 Crores and granted a deduction of this amount from the claim of the Bank of Rs.1.53 Crores. The contention of the

Bank, based on the provisions of Section 176 of the Contract Act, 1872 cannot be disregarded or be brushed aside as being devoid of substance. The Bank had raised an arguable issue which requires a more comprehensive and careful consideration by the revisional authority. Section 176 of the Contract Act provides as follows :

> "176. Pawnee's right where pawnor makes default. - If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.
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> If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor."

8. These provisions came to be interpreted in a judgment of a Division Bench of this Court presided over by the Hon'ble the Chief Justice, Mr. Justice Y.K. Sabharwal (as the Learned Chief Justice then was). The Division Bench, following the law laid down in a judgment of the Delhi High Court held that the very wording of

Section 176 makes it clear that it is the discretion of the pawnee to sell the goods in case the pawnor makes a default but if the pawnee does not exercise that discretion no blame can be put on the pawnee and pawnee has the right to bring a suit for recovery of the debt and retain the goods pledged as collateral security. In that case, certain FDRs were pledged as collateral security for the loan that was taken and it was held that there was no obligation on the Bank to adjust the installment which became due every month to it from the collateral security in the shape of FDRs. The attention of the Court has also been drawn to a judgment of a Division Bench of the Madras High Court in **S.L. Ramaswamy Chetty v. M. S. A. P. L. Palaniappa Chettiar** (AIR 1930 Madras 364), in which it has been held thus :

> "The respondent could not compel the appellants to exercise the power of sale as a means of discharging or satisfying the decree. His only rights were (1) in case the appellants exercised the power, to insist that it would be honestly and properly done and the sale proceeds applied to the debt (2) in case the appellants did not exercise the power, to redeem the pledges on payment of the debt or so much of it as remained otherwise unpaid and (3) in case the sale was improperly exercised, to get damages caused thereby."

9. When the revisional authority considers an application for revision against an order passed by the Sub-ordinate officer, under the Act it is only to be expected that there should be an application of mind to the issues which arise and which must be reflected in the reasons which are indicated in the order. In the present case, the reasons which have been indicated by the Divisional Joint Registrar (which have been extracted earlier) do not disclose an application of mind to the issues which arose in the revision application. The Divisional Joint Registrar has adverted to the order of the Assistant Registrar and he then proceeds to hold that it is a fact that shares to the tune of Rs.56.29 lacs were lying in the Bank and this information was given by the share agent of the Bank. Whether the Bank was bound to sell the shares is an issue which needs consideration in the light of the provisions of Section 176 of the Contract Act and the interpretation thereof by the Division Bench of this Court. That apart, the Divisional Joint Registrar seems to have proceeded on the *ipse dixit* that the valuation of shares as on 5th August, 1997 was in fact to the extent of Rs.60 lacs. The letter of sanction of the Bank of September 1997 records the valuation of the shares as Rs.8.14 lacs.

That apart, the affidavit of the share agent on which a considerable degree of reliance appears to have been placed makes the following reference :

> "That in first week of April 97 Shri. Joshi gave me the list prepared by me on 22/04/1996, and instructed me to find out the best selling value. I contacted my brokers and even management of Nilkamal Plastic, Vakarangie, ATN & sunil and gave him the best available price in the market. The market was very good and script like Pilani Investment, Thiru Haroon sugar was in good demand. I and Mr. Joshi roughly calculated that entire will fetch about 55 to 60 lacs."

10. Whether a value which is "roughly calculated" at "Rs.55 to 60 lacs" in April 1997 can at all be regarded as the value prevailing in August 1997 is something which ought to have been, but has not been, considered by the Divisional Joint Registrar.

11. On behalf of some of the Respondents it has been urged that there is no challenge by the Bank to the finding of the Assistant Registrar that persons who have ceased to be partners of the partnership concern, were not liable. However, a perusal of the grounds which have been set out in the revision application will show that a specific ground in that regard has been raised in paragraph 12

of the revision application to the following effect :

> "b. The learned assistant Registrar ought to have appreciated that the Respondent No.2 are the partnership firm and the Applicant has never accepted the change of constitution of Respondent No.2 from partnership firm to the proprietary concern. Therefore the Respondent Nos.2 to 6 cannot avoid their liability towards the bank for repayment of the Applicant Bank.
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> c. The learned assistant Registrar ought to have appreciated that the Respondent os.2 to 7 are the members of the Applicant Bank."

This point was specifically taken in the revision application, and it would appear from paragraph 3 of the submissions recorded by the revisional authority that a ground was in fact advanced on behalf of the Bank during the course of submissions in the following terms :

> "It is further submitted that the Assistant Registrar failed to appreciate that the Respondent No.2 are the partnership firm and the Applicant has never accepted the change of constitution of Respondent No.2 from partnership firm to the proprietary concern, and, therefore, the Respondent Nos.2 to 6 cannot avoid their liability towards the bank for repayment to the Applicant Bank."

A ground has similarly been raised in ground (d) of the proceedings before this Court. Then it has also been urged that the Bank had

accepted the Recovery Certificate in the amount of Rs.6.16 lacs and had commenced execution proceedings upon which it was not permissible to the Bank to take recourse to the revisional remedies. On behalf of the Bank, it has been submitted that there were two recovery certificates that were issued in favour of the Bank, one being Recovery Certificate No.1365 of 2000 in the amount of Rs.40.05 lacs, which does not relate to the dispute in the present case. The dispute in the present case arises out of Recovery Certificate 1134 of 2000 and it has been submitted that the sale notification which was issued by the Bank proceeded on the erroneous basis that the Recovery Certificate 1134 of 2000 was for the entire amount of the claim which was factually incorrect. In my view, the order of the Divisional Joint Registrar that has been impugned in these proceedings does not constitute a valid adjudication of the issues which arose in the revision. Hence, the appropriate course would be to remit the proceeding to the Divisional Joint Registrar for a fresh decision. It is clarified that the observations contained in the present order have been made to indicate the gravity of the dispute which arose before the authority below and shall not be regarded as a final

adjudication on the merits of the case. The revisional authority must exercise greater degree of caution in dealing with the applications before it which arise in the course of the exercise of its judicial powers. Judicial powers must be exercised judiciously and reasons which constitute the link between the dispute and application of mind by a judicial authority must indicate the basis of the decision. That unfortunately is wanting in the present case in the impugned order.

12. For all these reasons the impugned order of the Divisional Joint Registrar dated 16th October, 2003 is quashed and set aside and the matter shall stand remitted back to the Divisional Joint Registrar. Revision Application 39 of 2000 is restored to the file. Parties shall appear before the Divisional Joint Registrar for receiving directions on 2nd May, 2006. On remand, the Divisional Joint Registrar shall pass fresh orders after hearing all the parties on or before 31st July, 2006.

The Petition is disposed of in the aforesaid terms. There shall be no order as to costs.